

EMPLOYER'S ANNUAL RETURN (FORM 944)

A. Who Is Eligible and Required To File Form 944?

Beginning with Calendar year 2006, Form 944 will be the new filing requirement for all Form 941 taxpayers, both current and new employers, whose total annual Form 941 liability is **\$1000 or less per year.**

Household and agricultural employers cannot file Form 944.

Of the approximately 6 million Form 941 entities, an estimated 1 million taxpayers (17%) have a total annual ET liability of \$1000 or less per year. Research shows that 69% of all returns filed by this group of 1 million taxpayers are returns with a "zero" tax liability. Without the "zero" dollar returns, this group pays an average of \$2550.00 in wages annually and their average total annual Employment Tax Liability is \$437.00.

B. Systemic Procedures

1. **How are employers identified?** Late each year (Cycle 48), MITS will run an extract against BMF (using the prior July through June period) to identify every Form 941 filer who meets the \$1000 or less dollar threshold. For example the extract will analyze the 4-quarter period from July 2004 through June 2005 to determine whether the taxpayer's total annual 941 liability is \$1000 or less. For those filers who have fewer than 4 quarters of returns filed, the criterion will be an average of \$250 or less per quarter.
2. **Notification** - These employers will then be sent a notification letter telling them they have been changed to the annual filing requirement starting in the new calendar year. This letter will go out about February 1st of the calendar year, which allows time for employers to have filed the fourth quarter 941. The employer will be advised to file annually, and if the total annual tax liability remains below \$2500, they can pay the total liability with their return. Federal tax deposits are required at the point where the taxpayer exceeds the "de minimis" amount of \$2500 or more.
3. **Following years** - A taxpayer will remain Form 944 filers unless one of the following situations occur:
 - a. The taxpayer files Form 944 showing a total annual tax liability of more than \$1000. With the filing of this return, the system will automatically change the filing requirement for the new calendar year to the 941 and a CP 250 notice will be sent to the taxpayer notifying them of this change.
 - b. When notified that the Service has placed the entity in the 944 program, the taxpayer contacts us and indicates an intention to opt out of Form 944 filing, based on one of the following two reasons:
 - i. Payroll is expected to increase to annual liability of more than \$1000 in the coming year. We will systemically switch these entities when they file Form 944 showing more than \$1,000 in total liability.
 - ii. The taxpayer wants to **electronically** file on a quarterly basis.

4. **Newly eligible employers** - An extract will be done each December to identify newly eligible taxpayers, i.e., either taxpayers whose tax liability has decreased from the prior review period or new businesses that did not self-identify as eligible. Please note that if a taxpayer has opted out for a year and in the second year is identified as eligible, they will be changed to the 944 filing requirement and mailed a notification. If these taxpayer want to remain 941 filers, they must opt out again.

New employers can “self-identify” on the new Form SS-4, which is being revised and should be available 1/1/2006. The new SS-4 form will have an area for the taxpayers to indicate how much they expect to pay in wages. If \$4000 or less, the Service will establish them as 944 filers and the CP 575 that is sent to them providing their EIN will advise them that their ET filing requirement is the annual Form 944. If they indicate they expect to pay more than \$4000 in wages for the year, they will be designated as 941 filers. The CP575 that is sent to them with their EIN will identify which filing requirement they are required to follow. At this time, on-line EIN applicants can only be established as 941 filers. The IRS plans to update the online application in October 2006.

5. **Taxpayers who have a designated CAF representative or RAF agent** – The agent or representative will be sent CP 549 advising them that the client filing requirement has been changed.
6. **Electronic filing** - Because there are so few 944PR or 944 SS filers, we will have paper forms but not electronic versions for at least the first year. We will assess the demand in this area.
7. **Form 941 filers who were not identified in the extract but believe they qualify** – A common example is a seasonal employer who is only required to file one quarterly return a year. Technically, this filer is eligible for the 944 program and can contact us and ask to be placed into the annual filing program. If this taxpayer contacts us, Accounts Management (AM) should review the taxpayer’s filing information. If they meet the criteria and are within the timeframe (before April 1st), the AM assistor can change them from a 941 to 944 filing requirement.

C. Taxpayer Responsibilities

Return Filing - Identified Form 944 filers must file Form 944 for the entire calendar year by the following January 31st. For example, for calendar year 2006, they must file by January 31, 2007. Entities that cease paying wages can file sooner but their returns will be shelved for processing until the January processing schedule.

1. What if the entity fails to file or files late?

- a. A taxpayer who files a late Form 944, or does not file at all and a substitute for return (6020b) is established, will be treated for purposes of determining any filing requirement change as they would have had they filed timely. If the late Form 944 or the 6020b return is filed with a total annual tax liability of \$1000 or less, they will

continue to have the Form 944 filing requirement for the subsequent calendar year and will be assessed whatever late filing and/or payment penalties may be appropriate.

- b. If the late Form 944 or 6020b return shows a total annual tax liability of more than \$1000, they will be changed to a Form 941 quarterly filing requirement effective for the applicable calendar year and will be assessed whatever late filing and/or paying penalties for the Form 944 return, as well as for any late or non-filed subsequent Form 941's that the taxpayer is responsible for.

Payment - Taxpayers whose total annual ET liability is less than \$2500 can pay the total amount with their return via (1) a Form 944-V (voucher) which will be provided with the return; (2) EFTPS; (3) EFW (if they e-file); or (4) by credit card. Payment by FTD coupon or by EFTPS can be made during the year, if desired. Note: until Form 944 is included, the taxpayer should use the "Form 941" option in EFTPS.

If total tax for the year is \$1000 or less, the taxpayer will remain in the annual filing program. For taxpayers who exceed \$1000, a CP250 notice will be sent notifying them of a change to the 941 filing requirement for the new calendar year.

NOTE: The threshold for eligibility (\$1000 or less) is different from the threshold for required deposits (\$2500 or more). Taxpayers whose payroll grows must anticipate the growth and make timely deposits during the year. (This is similar to the current Form 941 requirement.) This is explained in the notification letter, the Form 944 instructions, and in the marketing publicity for the program.

Liability Exceeds \$2,500 - Taxpayers who increase their total annual liability to \$2500 or more for the year (but less than \$2,500 per quarter) must adhere to the following FTD schedule:

<u>Quarter</u>	<u>FTD Due Date</u>
January - March	April 30
April - June	July 31
July - September	October 31
October - December	January 31 or with return

If the accumulated liability is \$2500 or more in a quarter, taxpayer must deposit per the current monthly, semi-weekly or daily FTD requirements

If employers are unsure about the final annual total liability, they should make deposits to avoid any penalty (similar to situation with Form 941).

Penalties - The failure to deposit penalty will be assessed if the taxpayer makes a direct payment of \$2500 or more.

1. The standard FTD penalty waiver given to Form 941 filers will be given to taxpayers participating in the annual program for the first tax period following the change in deposit requirement. If the taxpayer's tax liability is more than \$1000 in a year, the taxpayer will be returned to a quarterly filing when the Form 944 is posted. The change in frequency waiver will be considered on the 1st quarter Form 941 filed after a Form 944 has been filed for the previous return period.
2. Reasonable Cause criteria for waiving FTD penalties will apply on the same basis as to the Form 941 filer.
3. For taxpayers who are no longer eligible but do not receive a notice to this effect until after the year has begun, Counsel has included language in the draft regs which allows for the TP to make their January and February monthly deposits by March 15, 2007, with NO FTD penalty to be assessed for any amount accrued for the month of January 2007. While this provision would be applicable to all such Form 944 filers, this provision is really only necessary for those whose liability will exceed \$2499 for the first Quarter 2007, because those whose tax liability is less than \$2500 for the quarter would be covered by the regular de minimis rule for Form 941 filers (i.e., can file their Form 941 and pay with their return if the total liability is less than \$2500).
4. Part 2 of the Form 944 has a chart which the TP will be asked to complete showing the amount of ET applicable to each of the 12 months in the calendar year.

Incorrect Form Filed - If an entity designated as a Form 944 filer files a quarterly return, either via paper or electronically, the return will "unpost" and Entity Unpostables (EU) will research and communicate with the taxpayer to clarify their intent and the proper filing requirement.

If the taxpayer actually intended to be a Form 941 filer based on the belief that its total tax liability will exceed \$1000, and files or contacts us prior to April 1st, Entity EU will communicate with the taxpayer and should make a change to the filing requirement on MF. The Form 941 would be processed accordingly. If the 944 taxpayer files a Form 941 after April 1st, EU will advise the taxpayer that it is a 944 filer for the year and to make appropriate deposits, but to file Form 944 for the calendar year and no additional Forms 941. IRS cannot change them to a Form 941 filing requirement after the first Form 941 for the year is due (4/30).